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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

GIOVANNI GABRIEL MONTES,

Defendant and Appellant.

A147081

(Sonoma County
Super. Ct. No. SCR656534)

Appellant Giovanni Gabriel Montes appeals from his no contest conviction and resulting sentence for one count of assault by means likely to cause great bodily injury (Pen. Code,¹ 245, subd. (a)(4)). Appellant's counsel has filed an opening brief in which no issues are raised, and asks this court for an independent review of the record as required by *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*). Counsel has declared that appellant has been notified that no issues were being raised by counsel on appeal, and that an independent review under *Wende* instead was being requested. Appellant was also advised of his right personally to file a supplemental brief raising any issues he chooses to bring to this court's attention. No supplemental brief has been filed by appellant personally.

We note that appellant has not obtained a certificate of probable cause, which is required by section 1237.5 when a defendant seeks to appeal from a judgment entered following a guilty or no contest plea. A certificate is not required when the notice of appeal states, as appellant's does here, that the appeal is based upon the sentence or other

¹ All further statutory references are to the Penal Code unless otherwise indicated.

matters occurring after the plea that do not affect the validity of the plea. Accordingly, we have reviewed the whole record pursuant to *Wende, supra*, 25 Cal.3d 436, and *People v. Kelly* (2006) 40 Cal.4th 106, focusing upon grounds for appeal arising after entry of the plea. Having done so, we conclude that there is no arguable issue on appeal.

Procedural and Material Factual Background of Case

A two-count criminal information was filed by the Sonoma County District Attorney charging appellant with one count of assault by means likely to produce great bodily injury (§ 245, subd. (a)(4)), and one count of assault with a deadly weapon (§ 245, subd. (a)(1)). The information also alleged several enhancements including that appellant had suffered a prior serious or violent felony within the meaning of section 1170.12, and two prior convictions for which he had been sentenced to state prison within the meaning of section 667.5, subdivision (b).

Thereafter, on February 2, 2015, following a mental health referral from the trial court, it was determined that appellant then was not competent to allow proceedings to continue, and he was committed to Napa State Hospital for three years or until he again became competent and could assist in his own defense. A subsequent certification from the director of Napa State Hospital confirmed that appellant had regained his mental competence and criminal proceedings could continue.

Pursuant to a negotiated plea agreement, on April 30, 2015, appellant entered a plea of no contest to one count of assault by means likely to produce great bodily injury (§ 245, subd. (a)(4)). The plea was conditioned on his being granted three years formal probation with “standard terms and conditions.”

The plea was accepted by the court on that same day in open court. At that time, appellant was asked if he had any questions concerning the explanation of the rights he was waiving by entering the plea, and the consequences of that plea, as set forth on his change of plea form. Appellant stated that he understood them and had no questions. The plea was accepted and the matter was referred to the domestic violence court for sentencing.

On May 29, 2015, imposition of sentence was suspended and appellant was placed on probation for three years, subject to certain conditions of probation. As is material here, conditions of probation included certain “gang terms,” including that he not possess, wear or display clothing that was affiliated with membership in a criminal street gang.

Thereafter, on June 18, 2015, the probation department requested that appellant’s probation be summarily revoked after he arrived at the Santa Rosa Police Department to register as a gang member while wearing clothing that contained gang elements. On July 6, 2015, appellant admitted that he had violated his probation by wearing clothing affiliated with a criminal street gang.

Ultimately, on October 29, 2015, the court denied a defense request that probation be reinstated, and imposed the aggravated term of four years in state prison, which was consistent with the sentencing probation report.

Conclusions Based Upon Independent Record Review

Upon our independent review of the record we conclude there are no meritorious issues to be argued, or that require further briefing on appeal. Appellant’s conviction resulting from his no contest plea was duly accepted upon a knowing and voluntary waiver of rights by appellant, including an acknowledgement of the consequences of entering the plea.

We also discern no error in the sentencing. The refusal to grant reinstatement of probation, and the sentencing choice made by the trial court were consistent with applicable law, supported by substantial evidence, and were well within the discretion of the trial court. The restitution fines and penalties imposed were supported by the law and facts. At all times appellant was represented by counsel.

DISPOSITION

The judgment is affirmed.

RUVOLO, P. J.

We concur:

RIVERA, J.

STREETER, J.